

coworker in a training environment while in performance of duty. He stopped work that day and returned to work on February 8, 2021.

On February 24, 2021 OWCP accepted appellant's claim for COVID-19. By separate decision of even date, it denied his claim for continuation of pay, finding that he failed to report the January 15, 2021 employment injury on a form approved by OWCP within 30 days, as required.

On March 2, 2021 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. In an accompanying statement, he proffered a number of factors, which delayed his filing of his Form CA-1. However, appellant acknowledged that he had seven calendar days where he "felt well enough" to file his claim.

On April 2, 2021 OWCP's Branch of Hearings and Review advised appellant that a telephonic hearing was scheduled for May 12, 2021 at 10:45 a.m. Eastern Standard Time (EST). Appellant was instructed to call the provided toll-free telephone number and enter the provided passcode when prompted. It mailed the notice to his last known address of record. Appellant did not appear for the hearing and no request for postponement of the hearing was made.

By decision dated May 24, 2021, OWCP's hearing representative found that appellant had abandoned his hearing request. The hearing representative indicated that appellant received 30 days' advance notice of the hearing scheduled for May 12, 2021 and found that there was no evidence that appellant had contacted OWCP either prior to, or subsequent to, the scheduled hearing to request a postponement or explain his failure to appear.

LEGAL PRECEDENT -- ISSUE 1

Section 8118(a) of FECA authorizes COP, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to a traumatic injury with his or her immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title.² This latter section provides that written notice of injury shall be given within 30 days.³ The context of section 8122 makes clear that this means within 30 days of the injury.⁴

OWCP's regulations provide, in pertinent part, that to be eligible for COP, an employee must: (1) have a traumatic injury which is job related and the cause of the disability and/or the cause of lost time due to the need for medical examination and treatment; (2) file Form CA-1 within 30 days of the date of the injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.⁵

² *Supra* note 1 at § 8118(a).

³ *Id.* at § 8122(a)(2).

⁴ *E.M.*, Docket No. 20-0837 (issued January 27, 2021); *J.S.*, Docket No. 18-1086 (issued January 17, 2019); *Robert M. Kimzey*, 40 ECAB 762, 763-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

⁵ 20 C.F.R. § 10.205(a)(1-3); *see also T.S.*, Docket No. 19-1228 (issued December 9, 2019); *J.M.*, Docket No. 09-1563 (issued February 26, 2010); *Dodge Osborne*, 44 ECAB 849 (1993); *William E. Ostertag*, 33 ECAB 1925 (1982).

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish entitlement to COP.

Appellant filed written notice of his traumatic injury (Form CA-1) on February 19, 2021. By decision dated February 24, 2021, OWCP denied his request for COP, as his claim was not filed within 30 days of the accepted January 15, 2021 employment injury. It noted that the denial of COP did not preclude appellant from filing a claim for disability due to the effects of the accepted employment injury. Because appellant filed written notice of his traumatic injury claim (Form CA-1) on February 19, 2021, the Board finds that it was not filed within 30 days of the accepted January 15, 2021 employment injury, as specified in sections 8118(a) and 8122(a)(2) of FECA. Accordingly, he is not entitled to COP.⁶

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Under FECA and its implementing regulations, a claimant who has received a final adverse decision by OWCP is entitled to receive a hearing upon writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.⁷ Unless otherwise directed in writing by the claims examiner, an OWCP hearing representative will mail a notice of the time, place, and method of the hearing to the claimant and any representative at least 30 days before the scheduled date.⁸

A claimant who fails to appear at a scheduled hearing may request in writing, within 10 days after the date set for the hearing that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.⁹ Where it has been determined that a claimant has abandoned his or her right to a hearing, OWCP's Branch of Hearings and Review will issue a formal decision finding that the claimant has abandoned his or her request for a hearing.

⁶ *Supra* note 6.

⁷ 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.616(a).

⁸ *Id.* at § 10.617(b).

⁹ *B.N.*, Docket No. 21-0509 (issued August 17, 2021).

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that appellant abandoned his request for a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

The record establishes that on March 5, 2021 in response to appellant's timely request for an oral hearing, OWCP's Branch of Hearings and Review notified appellant of the telephonic hearing scheduled to be held on May 12, 2021 at 10:45 a.m. EST. The hearing notice was properly mailed to appellant's last known address of record and provided instructions on how to participate. The notice was not returned as undeliverable. The Board has held that, absent evidence to the contrary, a notice mailed in the ordinary course of business is presumed to have been received by the intended recipient.¹⁰ The presumption is commonly referred to as the "mailbox rule." It arises when the record reflects that the notice was properly addressed and duly mailed. The current record is devoid of evidence to rebut the presumption that appellant received OWCP's September 25, 2020 notice of hearing. Appellant did not appear as instructed for the October 28, 2020 scheduled telephonic hearing and there is no indication that he requested postponement of the telephonic hearing. Moreover, he did not submit a written request within the 10 days after the date set for the telephonic hearing and request that another telephonic hearing be scheduled. The Board, thus, finds that OWCP properly determined that appellant abandoned his request for a telephonic hearing.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish entitlement to COP. The Board further finds that OWCP properly determined that appellant abandoned his request for a telephonic hearing.

¹⁰ *E.G.*, Docket No. 20-1184 (issued March 1, 2021); *R.L.*, Docket No. 20-0186 (issued September 14, 2020); *C.Y.*, Docket No. 18-0263 (issued September 14, 2018); *Claudia J. Whitten*, 52 ECAB 483 (2001).

ORDER

IT IS HEREBY ORDERED THAT the February 24 and May 24, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 21, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board